(3)

Single Bench

C.S.100/-

IN THE HIGH COURT OF CHHATTISGARH
AT BILASPUR

W.P. No. 961 /2005

Petitioner : SUKHDEO RAM,
S/o Late Paltu Ram,
aged about 53 years
Caste - Halba
R/o Bansla, President of Adivasi
Machhua Samiti, Bansla,
Vikas Khand Bhanupratappur,
Distt. Kanker (C.G.)

P.R. No. 972/05
Presented by Shri Pankaj Singh
dated 04.03.05

VERSUS

Respondents :
1. State of Chhattisgarh,
through : Director
Fisheries Department,
D.K.S. Bhawan, Raipur (C.G.)

2. Collector Kanker,
Distt. Kanker (C.G.)

3. Sub Divisional Officer (Civil)
Bhanupratappur, Kanker (C.G.)

4. Chief Executive Officer,
Janpad Panchayat Bhanupratappur
Distt. Kanker (C.G.)

5. Assistant Director
Fisheries Department, Kanker
Distt. Kanker (C.G.)

6. Sarpanch, Gram Panchayat Bansla
Tahsil Bhanupratappur
Distt. Kanker (C.G.)

RECEIVED-COPY
07.3.05
CLERK to A. G. BILASPUR

(4)

7. Panchayat Secretary,
Gram Panchayat Bansla,
Tahsil Bhanupratappur
Distt. Kanker (C.G.)

8. Mahila Bahu-uddeshiya Matsya
Samiti, (Machhli Palan)
Gram Panchayat Bansla,
Tahsil Bhanupratappur
Distt. Kanker (C.G.)

WRIT PETITION UNDER ARTICLES 226/227 OF THE CONSTITUTION OF INDIA FOR ISSUANCE OF WRIT IN THE NATURE OF MANDAMUS/CERTIORARI OR ANY OTHER DIRECTION/DIRECTIONS.

XI-HC-22

(56)

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

आदेश पत्रक

मामला क्रमांक W.P.961/ **सन्** 2005

..... **विरुद्ध** .....

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

17-3-2005

Mr. Pankaj Shrivastava, counsel for the petitioner.

Mr. Bhaskar Pyasi, Panel Lawyer for the State/respondents No.1, 2, 3 and 5.

Heard both the counsel on admission.

The petitioner has preferred this writ petition under Article 226/227 of the Constitution of India, being aggrieved by the order dated 10-2-2005 passed by the 1st Additional District Judge, Kanker, in Miscellaneous Civil Appeal No.2/2004, whereby the learned Additional District Judge dismissed the appeal and affirmed the order dated 17-4-2003 passed by the Civil Judge, Class-I, Bhanupratappur, in Civil Suit No.22-A/2003, whereby the learned Civil Judge rejected the application of the petitioner herein filed under Order 39 Rule 1 of the Code of Civil Procedure for grant of temporary injunction.

Brief facts leading to filing of this writ petition are that one tank is situated in Khasra No.173 rakba admeasuring 1.724 hectares, Village: Bansla, Tehsil: Bhanupratappur, District: Kanker. The said tank was allotted to the petitioner Society for the purpose of fishing and lease was executed in favour of the petitioner herein, and that lease came to be expired in the year 2002. On expiry of the lease, Gram Panchayat: Bansla, as mentioned in para 5.2 of the writ petition, gave a proposal, and an application was moved by the petitioner before the Collector, Kanker,

(पीछे देखिये)

XI-HC-22

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

आदेश पत्रक

मामला क्रमांक ...W.P.961/... **सन्** 2005

..... **विरुद्ध** .....

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित — 2 —	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

and he ordered for renewal of the lease for ten years vide order dated 22-2-2003 and informed the petitioner to deposit the lease money. Accordingly, the petitioner deposited the lease money. But respondent No.6 in order to take revenge and dispossess the petitioner from the tank is trying to handover the possession of the tank to one Mahila Bahu Uddeshiya Matsya Samiti, Bansla. The Sub Divisional officer, Bhanupratappur, conducted enquiry and found that only the petitioner is entitled for possession of the tank. Respondent No.6 is not executing the lease in favour of the petitioner, that is why he approached the Court of Civil Judge for injunction and direction. It has been prayed that the order passed by the Civil Judge and the Additional District Judge in appeal be quashed and temporary injunction may be granted in favour of the petitioner.

It is evident from para 8 of the appellate order that apart from the petitioner, which is an unregistered Society, there is one another Multipurpose Mahila (Matsya Palan) Sahakari Samiti, Bansla, a registered Society, and as per the Government policy Annexure P-12, as per the Cabinet decision dated 18th February, 2003, the Government laid down a policy for leasing out the tanks for fishing purposes. According to that order, the tanks area of which is up to 10 hectares are to be leased out by the Gram Panchayat. Para 2 of the said order envisages that the tank shall be leased out to the persons/Societies mentioned in para 2 in order

(पीछे देखिये)

(58)

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

आदेश पत्रक

मामला क्रमांक W.P.961/ **सन्** 2005

..... **विरुद्ध** .....

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित - 3 -	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

of preference and in that order, first of all a registered Machua Sahakari Samiti is entitled for lease, thereafter, Machua Samooh and thirdly, Machua Vyakti.

It is admitted position that the petitioner is not a registered Society, whereas, respondent No.8 is a registered Society. Therefore, in ~~favour~~ Vijesh of the above order of the Government, respondent No.8 has preferential right over the petitioner, as such, the petitioner has not been able to make out a prima facie case. In the circumstances, the trial Court as well as the appellate Court has rightly held that the petitioner has not been able to establish prima facie case, therefore, he is not entitled for issuance of temporary injunction in his favour.

Accordingly, I do not find any illegality and infirmity in the orders impugned. The petitioner has not been able to make out a case for interference by this Court under Article 227 of the Constitution of India. The writ petition is dismissed, at the admission stage itself. No order as to costs.

Consequently, M.(W.)P.No.768/2005 and I.A.No.1850/2005 stand disposed of.

Sd/-
L.C.Bhadoo
Judge

Soma

(पीछे देखिये)

16/05